

Gross receipts derived from sales of certain items for \$0.50 or less through bulk vending machines are not sales at retail subject to Retailers' Occupation Tax. See 35 ILCS 120/1. (This is a GIL).

April 29, 2002

Dear Xxxxx:

This letter is in response to your letter dated March 21, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

Thank you for spending time on the phone yesterday. I sincerely appreciate the letter you sent me with the explanation of H B 2113. Even though I wrote that bill, I wanted to be sure the Revenue Department had the same viewpoint as I did when I wrote it.

However, there was one area that was in question. When prizes such as stuffed animals etcetera are given away, and sales tax is paid on these prizes, are these redemption games also exempt from R.O.T.? Section 130-332, 25111., REG. 14070 Issue # 44 deals with this question. The second notice ended on 03/08/2002 and the formal meeting with JCAR was held on 03/05/2002 in Springfield. I hope you will be kind enough to send me a letter of explanation regarding that meeting.

Please be advised that the amendments to 86 Ill. Adm. Code 130.332 were adopted effective April 1, 2002. The amended rule was published at 26 Ill. Reg. 5369, Issue # 15, and dated April 12, 2002. The full text of the regulation is available for viewing or downloading at the Department's Website.

Subsection 130.332 (c) states as follows:

- c) Exempt Usage of Vending Machines – On and after January 1, 2002
 - 1) After December 31, 2001, the exemption applies to machines and parts for machines used in commercial, coin-operated amusement and vending businesses, so long as the owner, operator or user of the machine incurs a use or occupation tax liability. The following are examples of situations in which the tax liability is incurred on machines:

- A) Retailers' Occupation Tax is incurred on the sale of tangible personal property through a vending machine.
 - B) Use Tax liability is incurred on tangible personal property that is awarded as a "prize" resulting from the operation of an amusement machine.
- 2) For those machines or parts where a use or occupation tax is not incurred, the exemption does not apply to sales of those machines or parts for those machines. For example, a seller does not incur Retailers' Occupation Tax on gross receipts derived from sales of items through bulk vending machines. As a result, sales of bulk vending machines and parts for those machines are subject to tax. (Section 1 of the Act).

As explained by the regulation, tax liability must be incurred in operation of the machine for its purchase to qualify for the exemption. If a redemption machine dispenses toys as prizes, purchase of such a machine would be exempt if the machine operator pays Use Tax (sales tax) upon his purchase of the prizes. Please note that purchases of bulk vending machines remain fully taxable. This is because gross receipts derived from sales of certain items for \$0.50 or less through bulk vending machines are not subject to sales tax under Section 1 of the Retailers' Occupation Tax Act, 35 ILCS 120/1.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk